

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

Case No. 1:08-CV-907

v.

Hon. Robert J. Jonker

PEOPLEMARK, INC.,

Defendant.

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**ORDER GRANTING IN PART AND DENYING IN PART  
PLAINTIFF'S MOTION TO COMPEL DISCOVERY**

Plaintiff filed a motion to compel defendant to provide responses to certain discovery requests (docket no. 54). Nine days later plaintiff filed an addendum to its motion to enlarge its request to compel discovery (docket no. 58). The court will treat these as a single motion despite the fact defendant was required to file a second response. By the time the hearing was held, all of the requested discovery had been furnished, the bulk of it prior to the initial part of the motion being filed on August 25, 2009. The only issue remaining for the court to resolve is that of costs. Rule 37(a)(5). For the reasons more fully stated on the record at the hearing held September 18, 2009, the motion is **DENIED** as to the first part of the motion filed August 25, 2009 (docket no. 54) since the materials sought therein were furnished prior to the filing of motion (albeit the same day). The motion is **GRANTED** as to the second part of the motion filed September 3, 2009 (docket no. 58 - the Addendum) since several items of discovery were filed thereafter.

Both parties having been given an opportunity to be heard, the court finds that no costs should be awarded. The reasons are more fully stated on the record, but one concern is the parties' failure to abide by Local Rule 7.1 which requires the parties to confer in person or by telephone in attempting to resolve discovery disputes. The fact that the parties had met two weeks earlier by telephone to discuss discovery matters was not sufficient in this instance, in light of the rapidly changing landscape caused by the stream of material furnished from defendant to plaintiff without any further contact between the parties, to satisfy the requirement.

**IT IS SO ORDERED.**

Dated: September 23, 2009

/s/ Hugh W. Brenneman, Jr.  
HUGH W. BRENNEMAN, JR.  
United States Magistrate Judge